

1365
03.4.2024
Ct. No. 14
SB

W.P.A. 12053 of 2023
Samsunnahar Begum
Vs.
The State of West Bengal & Ors. .

Mr. Suchindram Bhattacharjee
... for the petitioner

Mr. Amitesh Banerjee
Mr. Tarak Karan ... for the State

Affidavit of service is taken on record.

Report filed on behalf of the State is also taken on record.

Despite service upon the private respondent no one represents.

Learned counsel for the petitioner submits as follows. The petitioner is the owner of the property in question. In an earlier title suit filed in respect of the property, an order of injunction was passed by the learned Civil Court restraining the defendant therein from excavating soil or cutting away trees in the said property. However, the present private respondent is a rank outsider who has no right, title, interest in the property. He is a local hooligan who is disturbing the possession of the property by the petitioner and is preventing her from constructing a boundary wall to protect her property. There are several cases pending against the private respondent, which were started by the locals. All these were brought to the notice of the police authorities, but no action was taken.

Learned counsel for the State relies on the report and submits as follows. In 2020, the petitioner filed a title suit in respect of the said property. The learned Civil Court granted a

permanent injunction against the principal defendant from illegally excavating soil and keeping brick by entering into the suit property and from illegal cutting of trees. On 18.8.2022, the petitioner lodged a complaint at the Kaliganj Police Station that in spite of the Civil Court's order, the private respondent were extracting soil earth and transporting the same with causing damage to trees and taking away branches of trees by JCB tractor. On such complaint Kaliganj P.S. Case No. 532 dated 18.8.2022 was started under Sections 447, 188, 379, 427, 34 of Indian Penal Code and Section 4(d) of W.B.L.R. Act. A charge sheet has been submitted against the private respondent and another vide a charge sheet number 740 dated 21.12.2022. In an earlier writ petition filed in this regard, the Court found no police in action and disposed of the matter. On 21.4.2023 the petitioner made another written complaint. Inquiry revealed that on 18.4.2023 when the petitioner and her husband went to the land to fence it, the private respondents prevented them from doing so and an altercation ensued, but no incident of assault occurred. However, a proceeding was initiated under Section 107 of the Code.

It appears that the private respondent has not raised any claim over the suit property. Therefore, he would be no one to prevent the petitioner from fencing her property.

It appears that a civil Suit is pending. If any of the parties wants to establish any further right in respect of the same, it has to be done before a Civil Court and not by way of exercise of brute force.

If the petitioner wants to construct a boundary wall to protect her property she shall be at liberty to do so after obtaining necessary permission from the local Panchayet, if such permission is required. She shall also be at liberty to make a representation before the local police authorities to provide protection when the boundary wall is constructed. The said representation shall be considered by the police authorities expeditiously and in accordance with law.

Even otherwise, the police shall keep a sharp vigil at the locale, ensure that no breach of peace takes place and see to it that no order of a Civil Court is violated.

With these observations, the writ petition is disposed of.

As affidavits were not called for, allegations are deemed not to have been admitted.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)